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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,146	02/13/2001	Marc D. VanHeyningen	05313.00003	1516

7590 12/15/2006

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/783,146

Examiner

Kambiz Zand

Applicant(s)

VANHEYNINGEN ET AL.

Art Unit

2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.


The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: See Continuation Sheet.


4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.


KAMBIZ ZAND
PRIMARY EXAMINER

Continuation of 3. (d) Other: a) The applicant's arguments do not contain clearly the claims at issue. As an example the applicant's appeal brief arguments only addresses independent method claims 1 and 47 and its limitation (see page 8, line 3 of the appeal brief) and it is silent with respect to independent claims 38, a system claim and also claim 20, a method claim. As best understood from pages 8-14 only claims 1, 7, 9-12, 24, 27, 40, 43, 49 and 53 have been addressed regarding the 102 and 103 rejection rendered by examiner. The appeal brief is dismissed since the brief does not contain a clear argument with respect to the claims at issue in a clear manner addressing each claim or a group of claims with similar limitation specially with respect to independent claims (i.e. claim 38 a system claim is not addressed, does it mean the rejection acceptable to applicant?). Examiner suggests inclusion of a heading for each claim or groups of claims with similar limitation.

b) applicant's arguments with respect to double patenting rejection are persuasive and the rejection would be withdrawn upon filing of the corrected appeal brief by applicant..



KAMBIZ ZAND
PRIMARY EXAMINER